

STATE OF MICHIGAN
COURT OF APPEALS

In re K. WARREN, Minor.

UNPUBLISHED

July 28, 2015

No. 325428

Ottawa Circuit Court

Family Division

LC No. 14-078337-NA

Before: MARKEY, P.J., and MURPHY and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to his five-year-old daughter under MCL 712A.19b(3)(b)(i) (parent's act caused sexual abuse and reasonable likelihood of further sexual abuse in foreseeable future), (g) (failure to provide proper care or custody and no reasonable expectation of ability to do so within a reasonable time), (j) (reasonable likelihood of harm if child returned to parent's home), and (k)(ix) (parent engaged in sexual contact or penetration with the child¹). We affirm.

A petition was filed alleging that respondent sexually abused the child and requesting that the trial court terminate respondent's parental rights. Following a single trial encompassing both adjudication and disposition, the trial court took jurisdiction and then terminated respondent's parental rights to the child. The trial court relied on abundant evidence showing that respondent had sexually abused the child, showing that respondent took no relevant responsive steps when informed that another individual had sexually assaulted the child, and showing that respondent had significant mental health issues that he knowingly was not properly addressing. The trial court further relied on abundant evidence showing that respondent committed extensive acts of domestic violence against his wife, often with the child present, showing that respondent engaged in sexual intercourse in the presence of the child, and showing that respondent made no effort to prevent the child from observing him when he urinated. We note that respondent had his parental rights voluntarily terminated relative to two other children that he was alleged to have abused and neglected.

With respect to the sexual abuse, the child had spontaneously and voluntarily told a therapist that respondent had touched her vaginal area. A forensic interviewer testified that the

¹ See MCL 722.622(w) and MCL 750.520a(q) and (r).

child told her that respondent had engaged in the following acts: digitally touching the child's vagina; making contact with the child's vagina with his penis; and placing his penis under the child's shorts. The child informed the forensic interviewer that respondent's penis "was sticky," and the child demonstrated to the interviewer the position of her body when respondent committed the sexual abuse. The child indicated that respondent's actions did not feel good. The forensic interviewer testified that the child was consistent and did not waiver with respect to her claims of sexual abuse. The forensic interviewer stated that "for a four-year-old, she provided information and was applying it to herself [in a way] that was very credible."

Respondent first argues that the trial court erred by finding that the statutory grounds for termination were proven by clear and convincing evidence. He then argues that the trial court clearly erred in finding that termination of his parental rights was in the child's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent contends that with respect to the allegations of sexual abuse for purposes of §§ 19b(3)(b)(i) and (k)(ix), the child's statements were inconsistent regarding the terminology used in referencing her genital area ("pee-pee" versus "coo-coo") and as to the precise location within the home where the sexual abuse took place (a bedroom versus a couch). Additionally, respondent suggests that the child's mother may have coached the child relative to the sexual abuse claims in an effort to have respondent removed from the child's life. Respondent also notes that the child did not indicate to the therapist or the forensic interviewer that she was sexually assaulted by a person other than respondent, thereby conflicting with evidence that the child had informed respondent's mother about being inappropriately touched by another individual connected to the family.

We hold that with respect to the claimed inconsistencies, they are of minimal relevance, if any at all,² especially in light of the expert testimony that the child was consistent, credible, and did not waiver with regard to conveying the substantive aspects of the sexual abuse. We are not left with a definite and firm conviction that the trial court made a mistake in finding that

² We note that respondent testified that the "couch" in his living room was a futon that he used as his bed.

respondent sexually abused the child; there was no clear error. Moreover, in regard to weighing conflicts in the evidence and making credibility assessments, we generally defer to the trial court when sitting as the trier of fact, and we have no reason or basis here not to accord such deference to the trial court. *Miller*, 433 Mich at 337. The trial court was free to disbelieve respondent's claim that he had not sexually abused the child.

With respect to §§ 19b(3)(g) and (j), the evidence alluded to above more than adequately supported termination under these provisions, and the only argument that respondent makes in regard to §§ 19b(3)(g) and (j) is that petitioner made no attempts to provide reunification services. It is true that petitioner must generally make reasonable efforts to reunify a child with the child's family, but not where aggravated circumstances are present. MCL 712A.19a(2)(a); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The sexual assault and abuse committed by respondent against the child served as an aggravated circumstance or reason for not providing reunification services to respondent. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(ii) and (iii). Moreover, because termination was the goal and properly sought at the initial dispositional hearing, reunification efforts were not required. *Moss*, 301 Mich App at 91; see also MCR 3.977(E) and MCL 712A.18f(1)(b).

Finally, with respect to the child's best interests, given the evidence of sexual abuse, a failure to protect, respondent's unaddressed mental health issues, domestic violence, and inappropriate conduct in the child's presence, along with evidence that there was virtually no bond between respondent and the child, that respondent lacked parenting ability, and that the child needed stability and permanence, the trial court did not clearly err in determining that termination was in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). We note that at the time of the adjudication and termination trial, the child resided with her mother, which usually weighs against termination. MCL 712A.19a(6)(a); *Olive/Metts*, 297 Mich App at 43. However, a trial court may nonetheless "terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." *Olive/Metts*, 297 Mich App at 43. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* Here, the trial court expressly addressed this issue as required by *Olive/Metts*, concluding that termination was still the appropriate course of action in light of respondent's horrific behavior and the understandable antagonism the mother felt towards respondent. There was no clear error in the court's finding.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Cynthia Diane Stephens